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15 GREEN DIAMOND RESOURCE COMPANY

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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
OAKLAND DIVISION

ENVIRONMENTAL PROTECTION
INFORMATION CENTER,

Plaintiff

v.

PAUL SOUZA, in his official capacity as
Acting Director of the U.S. Fish and Wildlife
Service; and U.S. FISH AND WILDLIFE
SERVICE,

Defendants.

Case No. 4:25-cv-03049-JST

**GREEN DIAMOND RESOURCE
COMPANY'S ANSWER TO
PLAINTIFF'S AMENDED
COMPLAINT**

Action Filed: April 3, 2025
Trial Date: None

ANSWER

Defendant-Intervenor Green Diamond Resource Company (Green Diamond), in response to Environmental Protection Information Center's (Plaintiff) Amended Complaint for Declaratory and Injunctive Relief (Complaint), answers as follows:

INTRODUCTION

6 1. Answering Paragraph 1, the allegations consist of Plaintiff's characterizations of its
7 Complaint and legal conclusions to which no response is required. The Biological Opinion (BiOp),
8 Incidental Take Statement (ITS), Habitat Conservation Plan (HCP), and Incidental Take Permit
9 (ITP) referenced in the Complaint speak for themselves and no further response is required. As to
10 any remaining allegations in this Paragraph, Green Diamond is without sufficient information to
11 form a belief as to their truth, and, on that basis, denies them.

JURISDICTION

13 2. Answering Paragraph 2, Green Diamond admits that Plaintiff provided 60 days'
14 notice of its intent to sue Defendant United States Fish and Wildlife Service (FWS) on September
15 17, 2020, over alleged violations of the ESA, and that an (updated) notice of intent was sent on
16 February 12, 2025, and received by FWS on February 14, 2025. To the extent that allegations in
17 this Paragraph consist of legal conclusions, no response is required. As to any remaining
18 allegations in this Paragraph, Green Diamond is without sufficient information to form a belief as
19 to their truth, and, on that basis, denies them.

20 3. Answering Paragraph 3, the allegations in this Paragraph include legal conclusions
21 to which no response is required. As to any remaining allegations in this Paragraph, Green
22 Diamond is without sufficient information to form a belief as to their truth, and, on that basis, denies
23 them.

VENUE

25 4. Answering Paragraph 4, Green Diamond admits that the decisions made by FWS at
26 issue in this litigation pertain to privately-owned lands that are located within this judicial district.
27 To the extent the allegations in this Paragraph consist of legal conclusions, no response is required.

1 As to any remaining allegations in this Paragraph, Green Diamond is without sufficient information
 2 to form a belief as to their truth, and, on that basis, denies them.

3 DIVISIONAL ASSIGNMENT

4 5. Answering Paragraph 5, the allegations in this Paragraph consist of legal
 5 conclusions to which no response is required. As to any remaining allegations in this Paragraph,
 6 Green Diamond is without sufficient information to form a belief as to their truth, and, on that basis,
 7 denies them.

8 PARTIES

9 6. Answering Paragraph 6, this Paragraph includes allegations purporting to describe
 10 the activities of Plaintiff and its claimed members. As to such allegations, Green Diamond is
 11 without sufficient information to form a belief as to their truth, and, on that basis, denies them. As
 12 to any remaining allegations in this Paragraph, Green Diamond denies them.

13 7. Answering Paragraph 7, the allegations in this Paragraph include descriptions of
 14 purported past and future activities of Plaintiff and its claimed members. As to such allegations,
 15 Green Diamond is without sufficient information to form a belief as to their truth, and, on that basis,
 16 denies them. Green Diamond denies that the HCP and ITP at issue in this litigation frustrate
 17 Plaintiff's mission and harm the interests its members and staff hold in northern spotted owls,
 18 marbled murrelets, and their forest habitats. As to any remaining allegations in this Paragraph,
 19 Green Diamond denies them.

20 8. Answering Paragraph 8, Green Diamond admits that at the time Plaintiff filed its
 21 Complaint, Paul Souza was Acting Director of FWS and that he is sued in his official capacity.
 22 The remaining allegations in this Paragraph consist of legal conclusions to which no response is
 23 required.

24 9. Answering Paragraph 9, Green Diamond admits that FWS is a federal agency within
 25 the U.S. Department of the Interior, and that FWS approved the BiOp, ITP, and HCP at issue in
 26 this litigation. The remaining allegations in this Paragraph consist of legal conclusions or
 27 characterizations of Plaintiff's claims to which no response is required.

28

FACTS

Northern Spotted Owl (*Strix occidentalis caurina*)

10. Answering Paragraph 10, the allegations in this Paragraph consist of Plaintiff's characterizations of the administrative record; those documents speak for themselves and no response is required. As to any remaining allegations in this Paragraph, Green Diamond is without sufficient information to form a belief as to their truth, and, on that basis, denies them.

11. Answering Paragraph 11, the allegations in this Paragraph consist of Plaintiff's characterizations of the administrative record; those documents speak for themselves and no response is required. As to any remaining allegations in this Paragraph, Green Diamond is without sufficient information to form a belief as to their truth, and, on that basis, denies them.

12. Answering Paragraph 12, the allegations in this Paragraph consist of Plaintiff's characterizations of the administrative record; those documents speak for themselves and no response is required. As to any remaining allegations in this Paragraph, Green Diamond is without sufficient information to form a belief as to their truth, and, on that basis, denies them.

13. Answering Paragraph 13, the allegations in this Paragraph consist of Plaintiff's characterizations of the administrative record; those documents speak for themselves and no response is required. As to any remaining allegations in this Paragraph, Green Diamond is without sufficient information to form a belief as to their truth, and, on that basis, denies them.

14. Answering Paragraph 14, the allegations in this Paragraph consist of Plaintiff's characterizations of the administrative record; those documents speak for themselves and no response is required. As to any remaining allegations in this Paragraph, Green Diamond is without sufficient information to form a belief as to their truth, and, on that basis, denies them.

15. Answering Paragraph 15, the allegations in this Paragraph consist of Plaintiff's characterizations of the administrative record; those documents speak for themselves and no response is required. As to any remaining allegations in this Paragraph, Green Diamond is without sufficient information to form a belief as to their truth, and, on that basis, denies them.

16. Answering Paragraph 16, the allegations in this Paragraph consist of Plaintiff's characterizations of the administrative record; those documents speak for themselves and no

1 response is required. As to any remaining allegations in this Paragraph, Green Diamond is without
2 sufficient information to form a belief as to their truth, and, on that basis, denies them.

3 17. Answering Paragraph 17, the allegations in this Paragraph consist of Plaintiff's
4 characterizations of the administrative record; those documents speak for themselves and no
5 response is required. As to any remaining allegations in this Paragraph, Green Diamond is without
6 sufficient information to form a belief as to their truth, and, on that basis, denies them.

7 18. Answering Paragraph 18, the allegations in this Paragraph consist of Plaintiff's
8 characterizations of official actions, documents, and statements made by FWS; those actions,
9 documents, and statements speak for themselves and no response is required. The allegations in
10 this Paragraph consist of Plaintiff's characterizations of the administrative record; those documents
11 speak for themselves and no response is required. As to any remaining allegations in this
12 Paragraph, Green Diamond is without sufficient information to form a belief as to their truth, and,
13 on that basis, denies them.

14 19. Answering Paragraph 19, the allegations in this Paragraph consist of Plaintiff's
15 characterizations of the administrative record; those documents speak for themselves and no
16 response is required. As to any remaining allegations in this Paragraph, Green Diamond is without
17 sufficient information to form a belief as to their truth, and, on that basis, denies them.

18 20. Answering Paragraph 20, the allegations in this Paragraph consist of Plaintiff's
19 characterizations of the administrative record; those documents speak for themselves and no
20 response is required. As to any remaining allegations in this Paragraph, Green Diamond is without
21 sufficient information to form a belief as to their truth, and, on that basis, denies them.

22 21. Answering Paragraph 21, the allegations in this Paragraph consist of Plaintiff's
23 characterizations of the administrative record; those documents speak for themselves and no
24 response is required. As to any remaining allegations in this Paragraph, Green Diamond is without
25 sufficient information to form a belief as to their truth, and, on that basis, denies them.

26 22. Answering Paragraph 22, the allegations in this Paragraph consist of Plaintiff's
27 characterizations of the administrative record; those documents speak for themselves and no
28

1 response is required. As to any remaining allegations in this Paragraph, Green Diamond is without
2 sufficient information to form a belief as to their truth, and, on that basis, denies them.

3 23. Answering Paragraph 23, the allegations in this Paragraph consist of Plaintiff's
4 characterizations of the administrative record; those documents speak for themselves and no
5 response is required. As to any remaining allegations in this Paragraph, Green Diamond is without
6 sufficient information to form a belief as to their truth, and, on that basis, denies them.

7 24. Answering Paragraph 24, the allegations in this Paragraph consist of Plaintiff's
8 characterizations of the administrative record; those documents speak for themselves and no
9 response is required. As to any remaining allegations in this Paragraph, Green Diamond is without
10 sufficient information to form a belief as to their truth, and, on that basis, denies them.

11 25. Answering Paragraph 25, the allegations in this Paragraph consist of Plaintiff's
12 characterizations of the administrative record; those documents speak for themselves and no
13 response is required. As to any remaining allegations in this Paragraph, Green Diamond is without
14 sufficient information to form a belief as to their truth, and, on that basis, denies them.

15 26. Answering Paragraph 26, the allegations in this Paragraph consist of Plaintiff's
16 characterizations of the administrative record; those documents speak for themselves and no
17 response is required. As to any remaining allegations in this Paragraph, Green Diamond is without
18 sufficient information to form a belief as to their truth, and, on that basis, denies them.

19 27. Answering Paragraph 27, the allegations in this Paragraph consist of Plaintiff's
20 characterizations of the administrative record; those documents speak for themselves and no
21 response is required. As to any remaining allegations in this Paragraph, Green Diamond is without
22 sufficient information to form a belief as to their truth, and, on that basis, denies them.

23 28. Answering Paragraph 28, the allegations in this Paragraph consist of Plaintiff's
24 characterizations of the administrative record; those documents speak for themselves and no
25 response is required. As to any remaining allegations in this Paragraph, Green Diamond is without
26 sufficient information to form a belief as to their truth, and, on that basis, denies them.

27 29. Answering Paragraph 29, the allegations in this Paragraph consist of Plaintiff's
28 characterizations of the administrative record; those documents speak for themselves and no

1 response is required. As to any remaining allegations in this Paragraph, Green Diamond is without
2 sufficient information to form a belief as to their truth, and, on that basis, denies them.

3 30. Answering Paragraph 30, the allegations in this Paragraph consist of Plaintiff's
4 characterizations of the administrative record; those documents speak for themselves and no
5 response is required. As to any remaining allegations in this Paragraph, Green Diamond is without
6 sufficient information to form a belief as to their truth, and, on that basis, denies them.

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8 Marbled Murrelet (*Brachyramphus marmoratus*)

9 31. Answering Paragraph 31, Green Diamond's response is admit.

10 32. Answering Paragraph 32, the allegations in this Paragraph consist of Plaintiff's
11 characterizations of the administrative record; those documents speak for themselves and no
12 response is required. As to any remaining allegations in this Paragraph, Green Diamond is without
13 sufficient information to form a belief as to their truth, and, on that basis, denies them.

14 33. Answering Paragraph 33, the allegations in this Paragraph consist of Plaintiff's
15 characterizations of the administrative record; those documents speak for themselves and no
16 response is required. As to any remaining allegations in this Paragraph, Green Diamond is without
17 sufficient information to form a belief as to their truth, and, on that basis, denies them.

18 34. Answering Paragraph 34, the allegations in this Paragraph consist of Plaintiff's
19 characterizations of the administrative record; those documents speak for themselves and no
20 response is required. As to any remaining allegations in this Paragraph, Green Diamond is without
21 sufficient information to form a belief as to their truth, and, on that basis, denies them.

22 35. Answering Paragraph 35, the allegations in this Paragraph consist of Plaintiff's
23 characterizations of the administrative record; those documents speak for themselves and no
24 response is required. As to any remaining allegations in this Paragraph, Green Diamond is without
25 sufficient information to form a belief as to their truth, and, on that basis, denies them.

26 36. Answering Paragraph 36, the allegations in this Paragraph consist of Plaintiff's
27 characterizations of official actions, documents, and statements made by FWS; those actions,
28 documents, and statements speak for themselves and no response is required.

1 37. Answering Paragraph 37, the allegations in this Paragraph consist of Plaintiff's
2 characterizations of the administrative record; those documents speak for themselves and no
3 response is required. As to any remaining allegations in this Paragraph, Green Diamond is without
4 sufficient information to form a belief as to their truth, and, on that basis, denies them.

5 38. Answering Paragraph 38, the allegations in this Paragraph consist of Plaintiff's
6 characterizations of the administrative record; those documents speak for themselves and no
7 response is required. As to any remaining allegations in this Paragraph, Green Diamond is without
8 sufficient information to form a belief as to their truth, and, on that basis, denies them.

9

10 Climate and ecosystem change in northern California

11 39. Answering Paragraph 39, the allegations in this Paragraph consist of Plaintiff's
12 characterizations of the administrative record; those documents speak for themselves and no
13 response is required. As to any remaining allegations in this Paragraph, Green Diamond is without
14 sufficient information to form a belief as to their truth, and, on that basis, denies them.

15 40. Answering Paragraph 40, the allegations in this paragraph consist of Plaintiff's
16 characterizations of Green Diamond's land ownership, which is a matter of public record, and the
17 administrative record; those documents speak for themselves and no response is required. As to
18 any remaining allegations in this Paragraph, Green Diamond is without sufficient information to
19 form a belief as to their truth, and, on that basis, denies them.

20 41. Answering Paragraph 41, the allegations in this Paragraph consist of Plaintiff's
21 characterizations of the administrative record; those documents speak for themselves and no
22 response is required. As to any remaining allegations in this Paragraph, Green Diamond is without
23 sufficient information to form a belief as to their truth, and, on that basis, denies them.

24

25 Green Diamond Resource Company HCP

26 42. Answering Paragraph 42, Green Diamond admits that it is a privately-owned timber
27 company based in Seattle, Washington. The remaining allegations in this Paragraph consist of
28 Plaintiff's characterizations of Green Diamond's land ownership, which is a matter of public

1 record, and the administrative record; those documents speak for themselves and no response is
 2 required. As to any remaining allegations in this Paragraph, Green Diamond is without sufficient
 3 information to form a belief as to their truth, and, on that basis, denies them.

4 43. Answering Paragraph 43, the allegations in this Paragraph consist of Plaintiff's
 5 characterizations of the administrative record; those documents speak for themselves and no
 6 response is required. As to any remaining allegations in this Paragraph, Green Diamond is without
 7 sufficient information to form a belief as to their truth, and, on that basis, denies them.

8 44. Answering Paragraph 44, the allegations in this Paragraph consist of Plaintiff's
 9 characterizations of the administrative record; those documents speak for themselves and no
 10 response is required. As to any remaining allegations in this Paragraph, Green Diamond is without
 11 sufficient information to form a belief as to their truth, and, on that basis, denies them.

12 45. Answering Paragraph 45, the HCP referenced in the Complaint speaks for itself and
 13 no further response is required. The remaining allegations consist of Plaintiff's characterizations
 14 of official actions, documents, and statements made by FWS, other public records concerning
 15 implementation of the HCP, and the administrative record; those actions, documents, and
 16 statements speak for themselves and no response is required. As to any remaining allegations in
 17 this Paragraph, Green Diamond is without sufficient information to form a belief as to their truth,
 18 and, on that basis, denies them.

19 46. Answering Paragraph 46, the allegations in this Paragraph consist of Plaintiff's
 20 characterizations of the administrative record, as well as actions, documents, and statements made
 21 by FWS; those documents, actions, and statements speak for themselves and no response is
 22 required. As to any remaining allegations in this Paragraph, Green Diamond is without sufficient
 23 information to form a belief as to their truth, and, on that basis, denies them.

24 **FIRST CLAIM FOR RELIEF**

25 **Violations of Section 7 of the Endangered Species Act**

26 47. Answering Paragraph 47, Green Diamond incorporates all of its responses set forth
 27 above.

48. Answering Paragraph 48, the allegations in this Paragraph consist of Plaintiff's characterizations of a federal statute; that statute speaks for itself and no response is required.

49. Answering Paragraph 49, the allegations in this Paragraph consist of Plaintiff's characterizations of a federal statute; that statute speaks for itself and no response is required.

50. Answering Paragraph 50, the allegations in this Paragraph consist of Plaintiff's characterizations of a federal statute and federal regulation; that statute and regulation speak for themselves and no response is required.

COUNT 1

51. Answering Paragraph 51, Green Diamond incorporates all of its responses set forth above as if fully set forth herein.

52. Answering Paragraph 52, the allegations in this Paragraph include legal conclusions to which no response is required. The HCP and BiOp referenced in the Complaint speak for themselves and no further response is required. Green Diamond denies the remaining allegations.

53. Answering Paragraph 53, the allegations in this Paragraph include legal conclusions to which no response is required. The HCP and BiOp referenced in the Complaint speak for themselves and no further response is required. Green Diamond denies the remaining allegations.

54. Answering Paragraph 54, the allegations in this Paragraph include legal conclusions to which no response is required. The HCP and BiOp referenced in the Complaint speak for themselves and no further response is required. The allegations in this Paragraph include Plaintiff's characterizations of the administrative record; those documents speak for themselves and no response is required. Green Diamond denies the remaining allegations.

55. Answering Paragraph 55, the allegations in this Paragraph include legal conclusions to which no response is required. The HCP, ITP, and BiOp referenced in the Complaint speak for themselves and no further response is required. The allegations in this Paragraph include Plaintiff's characterizations of the administrative record; those documents speak for themselves and no response is required. Green Diamond denies the remaining allegations.

56. Answering Paragraph 56, the allegations in this Paragraph include legal conclusions to which no response is required. The HCP and BiOp referenced in the Complaint speak for themselves and no further response is required. The allegations in this Paragraph include Plaintiff's characterizations of the administrative record; those documents speak for themselves and no response is required. Green Diamond denies the remaining allegations.

57. Answering Paragraph 57, the allegations in this Paragraph include legal conclusions to which no response is required. The HCP and BiOp referenced in the Complaint speak for themselves and no further response is required. The allegations in this Paragraph include Plaintiff's characterizations of the administrative record; those documents speak for themselves and no response is required. Green Diamond denies the remaining allegations.

58. Answering Paragraph 58, the allegations in this Paragraph include legal conclusions to which no response is required. The BiOp referenced in the Complaint speaks for itself and no further response is required. The allegations in this Paragraph include Plaintiff's characterizations of the administrative record; those documents speak for themselves and no response is required. Green Diamond denies the remaining allegations.

COUNT 2

FWS's "No Effects" Determination for Marbled Murrelet is Arbitrary and Capricious and Violates the ESA.

59. Answering Paragraph 59, Green Diamond incorporates all of its responses set forth above.

60. Answering Paragraph 60, the allegations in this Paragraph consist of Plaintiff's characterizations of a federal statute and regulation; that statute and regulation speak for themselves and no response is required.

61. Answering Paragraph 61, the allegations in this Paragraph include Plaintiff's characterizations of the BiOp and administrative record; those documents speak for themselves and no response is required. As to any remaining allegations in this Paragraph, Green Diamond is without sufficient information to form a belief as to their truth, and, on that basis, denies them.

62. Answering Paragraph 62, the allegations in this Paragraph include Plaintiff's characterizations of the BiOp and administrative record; those documents speak for themselves and

no response is required. As to any remaining allegations in this Paragraph, Green Diamond is without sufficient information to form a belief as to their truth, and, on that basis, denies them.

63. Answering Paragraph 63, the allegations in this Paragraph consist of Plaintiff's characterizations of the 2010 Master Agreement with the California Department of Fish and Wildlife; that document speaks for itself and no response is required. As to any remaining allegations in this Paragraph, Green Diamond is without sufficient information to form a belief as to their truth, and, on that basis, denies them.

64. Answering Paragraph 64, the allegations in this Paragraph consist of Plaintiff's characterizations of the 2010 Master Agreement with the California Department of Fish and Wildlife; that document speaks for itself and no response is required. As to any remaining allegations in this Paragraph, Green Diamond is without sufficient information to form a belief as to their truth, and, on that basis, denies them.

65. Answering Paragraph 65, the allegations in this Paragraph contain legal conclusions to which no response is required. As to any remaining allegations in this Paragraph, Green Diamond denies them.

COUNT 3

FWS's Decision to Approve Green Diamond's Habitat Conservation Plan and to Issue the Incidental Take Permit Violates its Duty to Avoid Jeopardy to Northern Spotted Owls.

66. Answering Paragraph 66, Green Diamond incorporates all of its responses set forth above.

67. Answering Paragraph 67, the allegations in this Paragraph consist of Plaintiff's characterizations of a federal statute; that statute speaks for itself and no response is required.

68. Answering Paragraph 68, the allegations in this Paragraph consist of Plaintiff's characterizations of the BiOp and administrative record; those documents speak for themselves and no response is required.

69. Answering Paragraph 69, the allegations in this Paragraph consist of legal conclusions to which no response is required. The BiOp, HCP, and ITP referenced in the Complaint speak for themselves and no response is required. As to any remaining allegations in this Paragraph, Green Diamond denies them.

70. Answering Paragraph 70, the allegations in this Paragraph consist of legal conclusions to which no response is required. The BiOp, HCP, and ITP referenced in the Complaint speak for themselves and no response is required. As to any remaining allegations in this Paragraph, Green Diamond denies them.

71. Answering Paragraph 71, the allegations in this Paragraph consist of legal conclusions to which no response is required. As to any remaining allegations in this Paragraph, Green Diamond denies them.

COUNT 4

FWS's Decision to Approve Green Diamond's Habitat Conservation Plan and to Issue the Incidental Take Permit Violates its Duty to Avoid Jeopardy to Marbled Murrelets or Adverse Modification of Marbled Murrelet Critical Habitat

72. Answering Paragraph 72, Green Diamond incorporates all of its responses set forth above.

73. Answering Paragraph 73, the allegations in this Paragraph consist of Plaintiff's characterizations of a federal statute; that statute speaks for itself and no response is required.

74. Answering Paragraph 74, the allegations in this Paragraph include Plaintiff's characterizations of the BiOp and administrative record; those documents speak for themselves and no response is required. The allegations in this Paragraph include legal conclusions to which no response is required. As to any remaining allegations in this Paragraph, Green Diamond is without sufficient information to form a belief as to their truth, and, on that basis, denies them.

75. Answering Paragraph 75, the allegations in this Paragraph consist of legal conclusions to which no response is required. As to any remaining allegations in this Paragraph, Green Diamond denies them.

SECOND CLAIM FOR RELIEF

Violations of Section 10 of the Endangered Species Act, 16 U.S.C. § 1539

76. Answering Paragraph 76, Green Diamond incorporates all of its responses set forth above.

77. Answering Paragraph 77, the allegations in this Paragraph consist of Plaintiff's characterizations of a federal statute; that statute speaks for itself and no response is required.

78. Answering Paragraph 78, the allegations in this Paragraph include Plaintiff's characterizations of the ITP, HCP, and administrative record; those documents speak for themselves and no response is required.

79. Answering Paragraph 79, the allegations in this Paragraph consist of Plaintiff's characterizations of the HCP and administrative record; those documents speak for themselves and no response is required. As to any remaining allegations in this Paragraph, Green Diamond denies them.

80. Answering Paragraph 80, the allegations in this Paragraph consist of Plaintiff's characterizations of the HCP and administrative record; those documents speak for themselves and no response is required. As to any remaining allegations in this Paragraph, Green Diamond denies them.

81. Answering Paragraph 81, the allegations in this Paragraph include Plaintiff's characterizations of the HCP and administrative record; those documents speak for themselves and no response is required. As to any remaining allegations in this Paragraph, Green Diamond denies them.

82. Answering Paragraph 82, the allegations in this Paragraph include Plaintiff's characterizations of the HCP and administrative record; those documents speak for themselves and no response is required. The allegations in this Paragraph include legal conclusions to which no response is required. As to any remaining allegations in this Paragraph, Green Diamond denies them.

83. Answering Paragraph 83, the allegations in this Paragraph consist of legal conclusions to which no response is required. As to any remaining allegations in this Paragraph, Green Diamond denies them.

PRAYER FOR RELIEF

Answering Paragraphs A through I of the Complaint's Prayer for Relief on page 18 and 19, Green Diamond denies each of those allegations and contends Plaintiff is not entitled to any relief whatsoever.

* * *

AFFIRMATIVE DEFENSES

Without admitting any of Plaintiff's allegations, or agreeing that Green Diamond bears any burden of proof, Green Diamond asserts the following affirmative defenses:

FIRST AFFIRMATIVE DEFENSE

(Failure to State a Claim)

Plaintiff fails to allege facts sufficient to support a plausible claim for which relief may be granted.

SECOND AFFIRMATIVE DEFENSE

(Statute of Limitations)

Plaintiff's alleged claims are barred in whole or in part by the applicable statutes of limitations.

THIRD AFFIRMATIVE DEFENSE

(Failure to Provide Adequate Notice)

Each claim for relief in the Complaint is barred and/or limited because Plaintiff failed to provide adequate notice as required under applicable statutes, including 16 U.S.C. § 1540(g).

FOURTH AFFIRMATIVE DEFENSE

(Lack of Standing)

The Complaint fails to present an actual case or controversy within the meaning of Article III of the U.S. Constitution.

FIFTH AFFIRMATIVE DEFENSE

(Equitable Doctrines)

Plaintiff's conduct does not support the issuance of any injunctive relief under equitable precepts, including unclean hands, estoppel, waiver and laches.

SIXTH AFFIRMATIVE DEFENSE

(Violation of Fifth Amendment)

Application of the federal Endangered Species Act as urged by Plaintiff under the circumstances presented here would run afoul of the Fifth Amendment to the U.S. Constitution.

SEVENTH AFFIRMATIVE DEFENSE

(Reservation of Rights to Assert Additional Defenses)

Green Diamond has not knowingly or voluntarily waived any applicable affirmative defenses and reserves the right to assert and rely on such other applicable affirmative defenses as may become available or apparent during subsequent proceedings. Green Diamond reserves the right to amend its answer to add or delete affirmative defenses.

RELIEF REQUESTED

Green Diamond respectfully asks that:

1. Plaintiff take nothing by reason of the Complaint or any claims stated therein;
2. Judgment of dismissal with prejudice be entered in favor of Defendants Paul Souza
S. Fish and Wildlife Service and Defendant-Intervenor Green Diamond, and against Plaintiff
respect to each claim pleaded in the Complaint;
3. Green Diamond be awarded its reasonably incurred fees and costs; and,
4. The Court grant such other and further relief as it may deem just and proper.

Respectfully submitted,

DATED: May 8, 2025

PAUL HASTINGS LLP

By: Christopher Carr
CHRISTOPHER J. CARR

Attorneys for Defendant-Intervenor
GREEN DIAMOND RESOURCE COMPANY